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Chapter IV
Protection of the atmosphere

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Chapter IV
Protection of the atmosphere

A. Introduction

1. The Commission, at its sixty-fifth session (2013), decided to include the topic "Protection of the atmosphere" in its programme of work, together with an understanding, and appointed Mr. Shinya Murase as Special Rapporteur.[1]

2. The Commission received and considered the first report of the Special Rapporteur at its sixty-sixth session (2014).[2]

B. Consideration of the topic at the present session

3. At the present session, the Commission had before it the second report of the Special Rapporteur (A/CN.4/681 and Corr.1 (Chinese only)). Building upon the first report, in the light of comments made by the Commission and the Sixth Committee of the General Assembly, the Special Rapporteur, in the second report, provided a further analysis of the draft guidelines submitted in the first report, offering a set of revised guidelines relating to the Use of terms, including a definition of the atmosphere,[3] the Scope of the draft

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[1] At its 3197th meeting, on 9 August 2013 (*Official Records of the General Assembly, Sixty-eighth Session, Supplement No. 10* (A/68/10)), para. 168. The Commission included the topic in its programme on the understanding that: "(a) Work on the topic will proceed in a manner so as not to interfere with relevant political negotiations, including on climate change, ozone depletion, and long-range transboundary air pollution. The topic will not deal with, but is also without prejudice to, questions such as: liability of States and their nationals, the polluter-pays principle, the precautionary principle, common but differentiated responsibilities, and the transfer of funds and technology to developing countries, including intellectual property rights; (b) The topic will also not deal with specific substances, such as black carbon, tropospheric ozone, and other dual-impact substances, which are the subject of negotiations among States. The project will not seek to 'fill' gaps in the treaty regimes; (c) Questions relating to outer space, including its delimitation, are not part of the topic; (d) The outcome of the work on the topic will be draft guidelines that do not seek to impose on current treaty regimes legal rules or legal principles not already contained therein. The Special Rapporteur's reports would be based on such understanding." The General Assembly, in paragraph 6 of its resolution 68/112 of 16 December 2013, took note of the decision of the Commission to include the topic in its programme of work. The topic had been included in the long-term programme of work of the Commission during its sixty-third session (2011), on the basis of the proposal contained in annex B to the report of the Commission (*Official Records of the General Assembly, Sixty-sixth Session, Supplement No. 10* (A/66/10), para. 365).

[2] (A/CN.4/667) (first report).

[3] The text of guideline 1, as proposed by the Special Rapporteur, read as follows:

"**Use of terms**

For the purposes of the present draft guidelines,

(a) "Atmosphere" means the envelope of gases surrounding the Earth, within which the transport and dispersion of degrading substances occurs.

(b) "Air pollution" means the introduction by human activities, directly or indirectly, of substances or energy into the atmosphere resulting in deleterious effects on human life and health and the Earth's natural environment.

(c) "Atmospheric degradation" includes air pollution, stratospheric ozone depletion, climate change and any other alterations of atmospheric conditions resulting in significant adverse effects to human life and health and the Earth's natural environment."

guidelines,[4] and the Common concern of humankind.[5] Moreover, the Special Rapporteur offered an analysis of the general obligation of States to protect the atmosphere and international cooperation for the protection of the atmosphere. In each instance, draft guidelines were presented on the General obligation of States to protect the atmosphere[6] and on International cooperation.[7] He suggested that common concern of humankind, the general obligation of States to protect the atmosphere and international cooperation were established in State practice and fundamentally interconnected, thereby forming a trinity for the protection of the atmosphere. The Special Rapporteur also presented a detailed future plan of work, in light of comments in the Commission in 2014 requesting such a plan. He estimated, on a tentative basis, that work on the topic could be completed in 2020, following a consideration of such issues as the principle of *sic utere tuo ut alienum non laedas*, the principle of sustainable development (utilization of the atmosphere and environmental impact assessment), the principle of equity, special circumstances and vulnerability, in 2016; prevention, due diligence and precaution, in 2017; principles guiding interrelationships with other fields of international law, in 2018; compliance and implementation, and dispute settlement, in 2019.

4. The Commission considered the report at its 3244th to 3249th meetings, on 4, 5, 6, 7, 8 and 12 May 2015.

5. The debate of the Commission was coupled with a dialogue with scientists organized by the Special Rapporteur on 6 May 2015.[8] Members of the Commission found the dialogue useful and were appreciative to the presenters for the contributions made.

[Definition of other terms will be proposed at later stages.]

[4] The text of guideline 2, as proposed by the Special Rapporteur, read as follows:

"**Scope of the guidelines**

(a) The present draft guidelines address human activities that directly or indirectly introduce deleterious substances or energy into the atmosphere or alter the composition of the atmosphere, and that have or are likely to have significant adverse effects on human life and health and the Earth's natural environment.

(b) The present draft guidelines refer to the basic principles relating to the protection of the atmosphere as well as to their interrelationship with other relevant fields of international law.

(c) Nothing in the present draft guidelines is intended to affect the legal status of airspace under applicable international law."

[5] The text of guideline 3, as proposed by the Special Rapporteur, read as follows:

"**Common concern of humankind**

The atmosphere is a natural resource essential for sustaining life on Earth, human health and welfare, and aquatic and terrestrial ecosystems, and hence the degradation of atmospheric conditions is a common concern of humankind."

[6] The text of guideline 4, as proposed by the Special Rapporteur, read as follows:

"**General obligation of States to protect the atmosphere**

States have the obligation to protect the atmosphere."

[7] The text of guideline 5, as proposed by the Special Rapporteur, read as follows:

"**International cooperation**

(a) States have the obligation to cooperate with each other and with relevant international organizations in good faith for the protection of the atmosphere.

(b) States are encouraged to cooperate in further enhancing scientific knowledge relating to the causes and impacts of atmospheric degradation. Cooperation could include exchange of information and joint monitoring."

[8] The dialogue with scientists on the protection of the atmosphere, was chaired by Mr. Shinya Murase, Special Rapporteur. Prof. Øystein Hov (President, Commission of Atmospheric Sciences, WMO);

6. Following its debate on the report, the Commission, at its 3249th meeting, on 12 May 2014, decided to refer draft guidelines 1, 2, 3 and 5, as contained in the Special Rapporteur's second report to the Drafting Committee, with the understanding that draft guideline 3 be considered in the context of a possible preamble. Moreover, the Special Rapporteur proposed to defer the referral by the Commission of a draft guideline on the general obligation of States to protect the atmosphere to the Drafting Committee pending further analysis in 2016.

7. At its 3260th meeting, on 2 June 2015, the Commission received the report of the Drafting Committee and provisionally adopted draft guidelines 1, 2 and 5 and four preambular paragraphs (see section C.1, below).

8. At its ... to ... meetings, on ... and ... July 2015, the Commission adopted the commentaries to the draft guidelines provisionally adopted at the present session (see section C.2, below).

C. Text of the draft guidelines on the protection of the atmosphere, together with preambular paragraphs, provisionally adopted so far by the Commission

1. Text of the draft guidelines, together with preambular paragraphs

9. The text of the draft guidelines on the protection of the atmosphere, together with preambular paragraphs, provisionally adopted so far by the Commission is reproduced below:

...

Acknowledging that the atmosphere is essential for sustaining life on Earth, human health and welfare, and aquatic and terrestrial ecosystems,

Bearing in mind that the transport and dispersion of polluting and degrading substances occur within the atmosphere,

Recognising therefore that the protection of the atmosphere from atmospheric pollution and atmospheric degradation is a pressing concern of the international community as a whole,

Recalling that these draft guidelines are not to interfere with relevant political negotiations, including those on climate change, ozone depletion, and long-range transboundary air pollution, and that they also neither seek to "fill" gaps in treaty regimes nor impose on current treaty regimes legal rules or legal principles not already contained therein,*

[Some other paragraphs may be added, and the order of paragraphs may be coordinated, at a later stage.]

...

Prof. Peringe Glennfelt (Swedish Environmental Research Institute); Mr. Masa Nagai (Deputy Director, Division of Environmental Law and Conventions, UNEP); Mr. Christian Blondin, Director Cabinet and External Relation Department, WMO); Ms. Albena Karadjova (Secretary of CLRTAP) and Ms. Jacqueline McGlade (Chief Scientist and Director, Division of Early Warning and Assessment, UNEP) made presentations. This was followed by a question and answer session.

* The terminology and location of this paragraph, which derives from paragraph 168 of the report of the International Law Commission, A/68/10 2013, will be revisited at a later stage in the Commission's work on this topic.

Draft guideline 1: Use of terms

For the purposes of the present draft guidelines,

(a) "Atmosphere" means the envelope of gases surrounding the Earth;

(b) "Atmospheric pollution" means the introduction or release by humans, directly or indirectly, into the atmosphere of substances contributing to deleterious effects extending beyond the State of origin, of such a nature as to endanger human life and health and the Earth's natural environment;

(c) "Atmospheric degradation" means the alteration by humans, directly or indirectly, of atmospheric conditions having significant deleterious effects of such a nature as to endanger human life and health and the Earth's natural environment.

Draft guideline 2: Scope of the guidelines

1. The present draft guidelines [contain guiding principles relating to] [deal with]* the protection of the atmosphere from atmospheric pollution and atmospheric degradation.

2. The present draft guidelines do not deal with, but are without prejudice to questions concerning the polluter-pays-principle, the precautionary principle, common but differentiated responsibilities, the liability of States and their nationals, and the transfer of funds and technology to developing countries, including intellectual property rights.

3. The present draft guidelines do not deal with specific substances, such as black carbon, tropospheric ozone, and other dual-impact substances, which are the subject of negotiations among states.

4. Nothing in the present draft guidelines affects the status of airspace under international law nor questions related to outer space, including its delimitation.

Draft guideline 5: International cooperation

(a) States have the obligation to cooperate, as appropriate, with each other and with relevant international organisations for the protection of the atmosphere from atmospheric pollution and atmospheric degradation.

(b) States should cooperate in further enhancing scientific knowledge relating to the causes and impacts of atmospheric pollution and atmospheric degradation. Cooperation could include exchange of information and joint monitoring.

2. Text of the draft guidelines together with preambular paragraphs, and commentaries thereto provisionally adopted by the Commission at its sixty-seventh session

10. The text of the draft guidelines, together with preambular paragraphs, and commentaries, provisionally adopted by the Commission at its sixty-seventh session is reproduced below:

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* The alternative formulations in brackets will be subject to further consideration.